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BEFORE THE FEDERAL ELECTION COMMISSION

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2005 SEP -7 A 9:14

In the Matter of

Texans for Henry Cuellar Congressional Committee,
and Rosendo Carranco, in his official capacity as
treasurer

)
) RR 05L-42

) MURs 5401 & 5422
)
)
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RR 05L-42: FIRST GENERAL COUNSEL'S REPORT

DATE OF REFERRAL: August 2, 2005

DATE ACTIVATED: August 2, 2005

STATUTE OF LIMITATIONS: January 12, 2010

MURs 5401 & 5422: GENERAL COUNSEL'S REPORT #2

I. ACTION RECOMMENDED

RR 05L-42: Open a MUR; find reason to believe that Texans for Henry Cuellar Congressional Committee and Rosendo Carranco, in his official capacity as treasurer, ("the Respondents" or "the Committee") violated 2 U.S.C. § 434(b)(4)

MUR 5401: No action recommended at this time.

MUR 5422:

II. BACKGROUND

On November 24, 2004, the Commission found reason to believe that Respondents violated 2 U.S.C. § 441d(a) in MUR 5401 and 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d) in

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1 MUR 5422. *See* First General Counsel's Report in MURs 5401 and 5422.¹

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4 This Office recommends that the Commission find reason to believe the
5 Respondents violated 2 U.S.C. § 434(b)(4)

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11 **III. DISCUSSION**

12 **A. RR 05L-42: Respondents Failed to Disclose All Financial Activity**

13 Subsequent to the Commission's initial findings in MURs 5401 and 5422, the Reports
14 Analysis Division referred the Committee to this Office for further examination in connection
15 with RAD Referral 05L-42, relating to the Committee's failure to disclose a significant operating
16 expenditure on its original 2004 12 Day Pre-General Report.

17 On October 21, 2004, the Committee filed a 12 Day Pre-General Report, covering the
18 period October 1, 2004 to October 12, 2004, reporting total disbursements of \$78,570.11. The
19 Report was amended on January 12, 2005 to disclose an additional disbursement of \$100,000,

¹ The violation at issue in MUR 5401 stemmed from the Committee's failure to include a disclaimer in certain automated telephone broadcast advertisements ("robocalls"). The violation in MUR 5422 related to the late-filing of a Schedule C-1 disclosing a \$200,000 bank loan the candidate had obtained for the benefit of the Committee

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1 which increased the total reported disbursements to \$178,570.11. The additional disbursement,
2 which had been made to the Campaign Group, Inc. for media services on October 7, 2004,
3 represented a 127% increase in activity from the original report and represented 56% of the
4 Committee's disbursements for the period.

5 RAD sent a Request for Additional Information ("RFAI") concerning the increase in
6 financial activity on March 29, 2005, and as outlined in detail in the referral, the Committee
7 missed several deadlines in responding to the original RFAI and the numerous follow-up
8 telephone calls placed by RAD.² On July 7, 2005, the Committee filed a Miscellaneous Report
9 explaining that the Committee employee responsible for filing reports had overlooked the
10 payment because it had been made by wire transfer, rather than by check. The Committee
11 explained that it "caught the omission through an audit of our bank account" which occurred
12 after the general election.

13 The treasurer of a political committee must file reports of all receipts and disbursements
14 in accordance with the Act. 2 U.S.C. § 434(a)(1). A committee is required to file a pre-election
15 report no later than the 12th day before any election in which the candidate is seeking election
16 which shall be complete as of the 20th day before the election. 2 U.S.C. § 434(a)(2)(A)(i). The
17 report shall disclose, *inter alia*, the total amount of disbursements, and an itemization of all
18 disbursements, including expenditures made to meet the candidate's or committee's operating
19 expenses. 2 U.S.C. § 434(b)(4)(b); 11 C.F.R. § 104.3(b)(2)(i). The Committee did not comply
20 with reporting requirements when it failed to disclose the \$100,000 operating expenditure on the

² The Committee filed a second amendment to the Report at issue on February 25, 2005 and a third Amendment on July 5, 2005. Both amendments included the same amount of total disbursements as the first Amendment (\$178,570.11), but reported different amounts for operating expenditures and loan repayments.

original 2004 12 Day Pre-Primary Report filed on October 21, 2004. The omission meant that the public lost the benefit of viewing a significant amount of the Committee's total disbursements before the general election. The earliest amendment to the report was filed several months later. *See* 2 U.S.C. § 434(b)(4); *see also* 11 C.F.R. § 104.3(b)(2)(i). Accordingly, this Office recommends that the Commission find reason to believe that Texans for Henry Cuellar Congressional Committee and Rosendo Carranco, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).

B. MUR 5401: Disclaimers Were Not Required For Robo-Calls

As described in the First General Counsel's Report in MUR 5401, the Committee broadcast certain automated telephone advertisements in December 2003 which lacked a disclaimer stating who paid for or authorized the communication. This Office conducted an investigation into the Committee's robo-call program, reviewing the Committee's call list and interviewing the campaign manager who was responsible for managing the program. Based on this information, we have determined that while there were no disclaimers on the Committee's robo-call program, it also never called more than 500 telephone numbers with its autodialer machine, which is the threshold amount of calls required for the disclaimer requirements to apply to a program.³ Thus, this Office concludes that the disclaimer requirements do not apply to the

³ Campaign manager Colin Strother, who is now Congressman Cuellar's chief of staff, stated the campaign used an inexpensive, off-the-shelf autodialer purchased by the candidate over the Internet and used by him prior to the 2004 campaign to promote his private law practice and various charitable endeavors. Strother acknowledged that he was the author of several different scripts that the Committee used for the autodialer program and that he did not include disclaimers with the campaign messages. The calls were made to targeted areas of Laredo known to be strongholds of Cuellar's election opponent. The Committee obtained the phone numbers in these neighborhoods from Aristotle International, and the list of numbers, which was provided to this Office, amounted to 378 telephone numbers. Strother stated that the list of phone numbers submitted to this Office was complete and contained the only numbers ever called by the campaign.

Respondent's calls. *See* 2 U.S.C. § 431(24); 11 C.F.R. § 100.28. (disclaimer rules apply to "telephone banks," which are defined as phone programs involving more than 500 telephone calls of an identical or substantially similar nature made within any 30-day period). This Office anticipates recommending that the Commission take no further action with respect to the disclaimer violation in MUR 5401. For administrative purposes, the recommendation to close the file in MUR 5401 will be made in connection with closing the file in the other MURs discussed in this Report.

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8 **III. RECOMMENDATIONS**

9 **RR 05L-42:**

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11 1. Open a MUR.
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13 2. Find reason to believe that Texans for Henry Cuellar Congressional Committee and
14 Rosendo Carranco, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).
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16 3.
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20 4. Approve the attached Factual and Legal Analysis.
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22 **RR 05L-42 and MUR 5422:**

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2. Approve the appropriate letter.

Lawrence H. Norton
General Counsel

Date

9/6

BY:


Rhonda J. Vosdigh
Associate General Counsel for Enforcement


Mark D. Shonkwiler
Assistant General Counsel


Peter G. Blumberg
Attorney

Attachments

- 1.
2. Proposed Factual and Legal Analysis